

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JODI CLAIRE CLARK,  
  
Plaintiff,  
  
v.  
  
KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,  
  
Defendant.

CASE NO.: 1:22-cv-00227-BAK-GSA

**FINDINGS AND  
RECOMMENDATIONS TO DENY  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS AND TO  
REQUIRE FILING FEE PAYMENT,  
AND DIRECTING CLERK OF COURT  
TO RANDOMLY ASSIGN A UNITED  
STATES DISTRICT JUDGE**

**(Docs. 3)**

On February 23, 2022 Plaintiff filed a complaint in this Court and applied to proceed without prepayment of fees (*in forma pauperis*) pursuant to 28 U.S.C. § 1915. Docs. 1–3.

**I. Legal Standard**

In order to proceed without prepayment of the filing fee, Plaintiff must submit an affidavit demonstrating that she “is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). “To proceed in forma pauperis is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). In enacting the in forma pauperis statute, “Congress intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because . . . poverty makes it impossible . . . to pay or secure the costs of litigation.” *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (internal quotations and citations omitted).

The determination whether a party may proceed in forma pauperis is a “matter within the

1 discretion of the trial court . . .” *Weller v. Dickinson*, 314 F.2d 598, 600 (9th Cir. 1963). To proceed  
2 in forma pauperis, a plaintiff need not demonstrate that he is completely destitute, but his poverty  
3 must prevent him from paying the filing fee and providing himself and his dependents (if any) with  
4 the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948).  
5 Although there is no bright line rule, courts look to the federal poverty guidelines developed each  
6 year by the Department of Health and Human Services. *See, e.g., Lint v. City of Boise*, No. CV09-  
7 72-S-EJL, 2009 WL 1149442, at \*2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

## 8 **II. Findings**

9 Plaintiff’s application reflects that she has no spouse, no dependents, and received income  
10 of \$2,130 per month over the past year (\$25,560 per year) in social security and employment  
11 income, which is substantially more than the 2022 federal poverty guideline for a household of one  
12 (\$13,590) per year. *See* 2022 Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (last  
13 visited February 24, 2022). The application reflects monthly expenses nearly equivalent to monthly  
14 income, and no cash on hand. Although Plaintiff’s budget does appear tight, the itemized monthly  
15 expenses reflect at least some extent of discretionary spending beyond strict necessity, including  
16 \$145 per month earmarked for phone and internet, \$334 per month in car payments, and \$600 per  
17 month in credit card installment payments beyond the amounts already earmarked for food, utilities,  
18 transportation, and recreation. The application reflects \$900 in installment payments still owing  
19 on her 2013 Ford Explorer she estimates is worth \$13,000. The application also reflects that  
20 Plaintiff lives with a friend and pays no rent. These facts, in addition to the significant gap between  
21 Plaintiff’s income and the federal poverty line for a household of one suggest an ability to pay the  
22 \$402 filing fee without sacrificing the necessities of daily life.

## 23 **III. Recommendation**

24 Accordingly, it is RECOMMENDED that Plaintiff’s application to proceed in forma  
25 pauperis be denied (Doc. 3).

26 The Clerk of Court is DIRECTED to randomly assign this case to a United States District  
27 Judge for resolution of these findings and recommendations pursuant to the provisions of Title 28  
28 U.S.C. § 636(b)(1). Within fourteen (14) <sup>2</sup>days from the filing of these findings and

1 recommendations, Plaintiff may file written objections with the court. L.R. 304(b). Such a  
2 document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”  
3 Plaintiff is advised that failure to file objections within the specified time may result in the waiver  
4 of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v.*  
5 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6  
7 IT IS SO ORDERED.

8 Dated: February 24, 2022

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE